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| In re Application of | : | |
| Reddy et al. | : | DECISION ON PETITION AND |
| Application No. 10/664,861 | : | REQUEST FOR CORRECTED |
| Filed: September 22, 2003 | : | FILING RECEIPT |
| Attorney Docket No. AVR-100 | : | |

This is a decision on the petition filed April 15, 2005, which is being treated as a petition under 37 CFR 1.181, requesting a corrected filing receipt to reflect the claim under 35 U.S.C. § 119(e) for the benefit of priority to the prior-filed provisional Applications, No. 60/411,989, filed September 19, 2002, and No. 60/411,994, filed September 19, 2002.

A review of the record indicates that the specification submitted on September 22, 2003, contained a reference to the prior-filed provisional applications as required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i). Furthermore, applicants submitted this reference during the pendency of the above-identified application and within the period specified in 37 CFR 1.78(a)(5)(ii).

The Office notes: "When the day, or the last day fixed by statute or by or under this part for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or on a Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding business day which is not a Saturday, Sunday, or a Federal holiday." 37 CFR 1.7(a). In this instance, applicants filed the above-identified nonprovisional application on Monday, September 22, 2003, which was the next succeeding business day following the closure of the USPTO on Thursday, September 18, 2003, and Friday, September 19, 2003. The USPTO considered the closure a "Federal Holiday within the District of Columbia" under 35 U.S.C. § 21. *See* 1275 OG 142 (October 21, 2003). The USPTO further declared that any action due on Thursday, September 18, 2003, and Friday, September 19, 2003,¹ would be considered as timely for the purposes of 35 U.S.C.

¹ "With respect to claiming benefit under 35 U.S.C. 119(e) to provisional applications, effective November 29, 1999, Public Law 106-113 amended 35 U.S.C. 119(e)(2) to eliminate the copendency requirement for a nonprovisional application claiming benefit of a provisional application." MPEP 201.11(B). "However, pursuant to 35 U.S.C. 119(e)(1), the nonprovisional application must be filed not later than 12 months after the date on which the provisional application was filed." *Id.* "If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the nonprovisional application may be filed on that next succeeding business day. *See* 35 U.S.C. 21(b), 37 CFR 1.7(b), and MPEP § 201.04(b) and § 505." *Id.*

§ 119, if the action was taken on the next succeeding business day on which the USPTO was open, *i.e.* Monday, September 22, 2003. *See* 1275 OG 142 (October 21, 2003). Unfortunately, due to an oversight, the USPTO did not note the claim for priority to the prior-filed provisional Applications, No. 60/411,989 and No. 60/411,994. Accordingly, the petition is **granted**.

A corrected filing receipt, reflecting the claim under 35 U.S.C. § 119(e) for the benefit of priority to the prior-filed provisional Applications, No. 60/411,989, filed September 19, 2002, and No. 60/411,994, filed September 19, 2002, accompanies this decision.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

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Attachment: Corrected Filing Receipt